

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CODY GRAHAM,**

**Plaintiff,**

**v.**

**WEST VIRGINIA DIVISION OF CORRECTIONS  
AND REHABILITATION, JOHNNY WILSON, CO I  
II DAVID EWING, CORPORAL CHAYSE  
BROWN, CORPORAL SNODGRASS, CO I  
TANNER SEARS, SERGEANT MICHAEL  
SHAFFER, LT MITCHELL, and CORPORAL  
SETH SUMMERS.**

**Defendants.**

**Civil Action No.: 2:22-cv-00467**

**(Removed from Circuit Court of  
Kanawha County; Civil Action No 22-  
C-513)**

**NOTICE OF REMOVAL**

To: Cathy Gatson, Clerk  
Kanawha County Courthouse  
P.O. Box 2351  
111 Court Street  
Charleston, WV 25301

**Counsel for Plaintiff:**  
Paul M. Stroebe, Esq.  
STROEBEL & STROEBEL PLLC  
P.O. Box 2582  
Charleston, West Virginia 25329

**COMES NOW** Defendants Sergeant Michael Shaffer and Corporal Seth Summers, by and through counsel, William E. Murray, Jaden Rhea, and the law firm of Anspach Meeks Ellenberger LLP, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 28 U.S.C. § 1441, and states that it has removed this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia upon the following grounds:

1. On or about October 21, 2022, these Defendants were served with a copy of a Summons and Complaint in an action commenced in the Circuit Court of Kanawha County, West Virginia, styled *Cody Graham v. West Virginia Division of Corrections and Rehabilitation, et al.*, Civil Action number 22-C-513, through service via process server. Copies of this

Summons and Complaint along with the docket sheet for this action pending in Kanawha County, West Virginia, are attached hereto as **Exhibits 1 and 2**, respectively, as required by 28 U.S.C. § 1446(a).

2. This Notice of Removal has been filed and lodged with the Circuit Court of Kanawha County, West Virginia. No further proceedings have been had therein.

3. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, in that the Complaint reveals a federal question, and is, therefore, one which may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(a):

(a) Plaintiff Cody Graham (hereinafter “Plaintiff”) asserts that while he was an inmate at Mount Olive Correctional Center (MOCC), Defendants used excessive force against him.

(b) In his Complaint, Plaintiff asserts theories of liability including, but not limited to: “The conduct described herein deprived plaintiff of his rights and privileges under the Constitution of the United States of America.” (*Complaint 16*); “a violation of Plaintiff’s rights under the Eight Amendment of the United States Constitution to be free from unreasonable intrusions on his bodily integrity.” (*Complaint 17*); and “in violation of Plaintiff’s right to be free from excessive force under the Eighth Amendment.” (*Complaint 18*),

3. Notice of Removal is filed timely.

4. The Kanawha County Circuit Court docket sheet (Exhibit 2) does not reflect a return of service of any other named defendant. **See Exhibit 2.**

5. Pursuant to 28 U.S.C. § 1446(b), notice of this removal is being filed with the Circuit Clerk of Kanawha County, West Virginia, and upon counsel of record. **See Exhibit 3.**

WHEREFORE, this Defendant has removed this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia. No further proceedings in this action can be had in the aforesaid circuit court.

Dated: October 25, 2022

**SERGEANT MICHAEL SHAFFER and  
CORPORAL SETH SUMMERS,**

**By Counsel**

/s/ William E. Murray

William E. Murray, Esq. (WVSB #2693)

Jaden Rhea (WVSB #13454)

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Defendants.

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**CERTIFICATE OF SERVICE**

I, William E. Murray, counsel for defendants Sergeant Michael Shaffer and Corporal Seth Summers, do hereby certify that on this 25<sup>th</sup> day of October, 2022, I electronically filed the foregoing ***“Notice of Removal”*** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant:

Paul Stroebel, Esq. (WVSB# 5758)  
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*Counsel for Plaintiff*

/s/ William E. Murray  
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